

Before the  
Federal Communications Commission  
Washington, DC 20554

2001 NOV -7 A 10: 19

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
East Grand School - SAD #14	)	File No. SLD-160387
Danforth, Maine	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: November 2, 2001**

**Released: November 5, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by East Grand School - SAD#14 (East Grand), Danforth, Maine, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> East Grand seeks review of SLD's denial of one of East Grand's Funding Year 3 requests for discounts under the schools and libraries universal service mechanism.<sup>2</sup> For the reasons discussed below, the Request for Review is denied.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all

<sup>1</sup> Letter from William T. Dobbins, East Grand School - SAD #14, to Federal Communications Commission, filed March 16, 2001 (Request for Review).

<sup>2</sup> Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

potential competing service providers to review.<sup>4</sup> After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.<sup>5</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. In the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing window is in effect.<sup>6</sup> These rules provide that requests for telecommunications and Internet access service for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services).<sup>7</sup> Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications service and Internet access.<sup>8</sup> Any funding remaining is allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.<sup>9</sup> Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their request for internal connections. To the extent that funds remain, the Administrator would continue to allocate funds for discounts to eligible applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.<sup>10</sup> In Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.<sup>11</sup>

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<sup>4</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S.Ct. 423 (November 2, 2000).

<sup>5</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

<sup>6</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915 (1998) (*Fifth Order on Reconsideration*).

<sup>7</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>8</sup> The annual cap on federal universal service support for schools and libraries is \$2.25 billion per funding year. See 47 C.F.R. § 54.507(a).

<sup>9</sup> *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

<sup>10</sup> 47 C.F.R. § 54.507(g)(1)(iii).

<sup>11</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, FCC 01-143, n.13 (rel. April 30, 2001) (*Further Notice of Proposed Rulemaking*).

4. In Funding Year 3, in an effort to ensure that the priority rules were not violated, SLD implemented a review procedure of reclassifying a request that the applicant designated telecommunications or Internet access (Priority One) as one seeking Priority Two services if any portion of the services requested were found to be Priority Two.<sup>12</sup> Absent such a procedure, SLD would be unable to act on funding requests that mixed Priority One and Priority Two services until Priority Two availability could be determined with certainty. This, in turn, would create a substantial backlog of application reviews late in the Funding Year 3 application review period, potentially causing funding delays injurious to applicants.<sup>13</sup>

5. At issue is Funding Request Number (FRN) 311017 of East Grand's Funding Year 3 application, which East Grand listed as a request for discounted Internet access.<sup>14</sup> During its application review, however, SLD reclassified the request as one seeking internal connections, and on May 19, 2000, denied the request on the grounds that the "[f]unding cap will not provide for [i]nternal [c]onnections less than 81% discount to be funded."<sup>15</sup>

6. East Grand appealed to SLD, asserting that SLD had perhaps accidentally mislabeled FRN 311017 as one seeking internal connections and requesting that the "transcription error" be corrected and FRN 311017 again characterized as Internet access.<sup>16</sup> On February 27, 2001, SLD denied the appeal.<sup>17</sup> It explained that it had intentionally characterized FRN 311017 as internal connections because the request included some internal connections services, specifically the maintenance of routers and an Internet server.<sup>18</sup> East Grand then filed the pending Request for Review.

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<sup>12</sup> See SLD Web Site, <[http://www.sl.universalservice.org/reference/471\\_App\\_Guid\\_Docs/471\\_dozen.asp](http://www.sl.universalservice.org/reference/471_App_Guid_Docs/471_dozen.asp)> (last updated April 15, 1999) ("To correctly apply the Rules of Priority (fund Telecommunications and Internet Access first, then Internal Connections beginning with neediest), SLD must 'scrub' telecommunications and Internet Access requests to assure no Internal Connections are included. A piece of equipment at the user's location listed in one of these categories risks having the entire service redefined as Internal Connections."); see also SLD Web Site, <<http://www.sl.universalservice.org/reference/ServCategories.asp>> (describing review procedure used in Funding Year 3 and new procedure applied in Funding Year 4).

<sup>13</sup> See SLD Web Site, <<http://www.sl.universalservice.org/reference/ServCategories.asp>> ("While some applicants might prefer to wait until they know for sure whether funding will be sufficient to fund Internal Connections . . . SLD must process tens of thousands of applications and cannot leave these decision until the end and still meet its goal of notifying applicants of the decisions on their requests before the start of the fund year.").

<sup>14</sup> FCC Form 471, East Grand School – SAD #14, filed January 17, 2000, at 2 (East Grand Form 471).

<sup>15</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to William Dobbins, East Grand School - SAD #14, dated May 19, 2000, at 5.

<sup>16</sup> Letter from William Dobbins, East Grand School – SAD #14, to Schools and Libraries Division, Universal Service Administrative Company, filed May 30, 2000, at 2.

<sup>17</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to William Dobbins, East Grand School - SAD #14, dated February 27, 2001 (Administrator's Decision on Appeal).

<sup>18</sup> *Id.* at 1.

7. In its Request for Review, East Grand first argues that the documentation on which SLD relied, Attachment A to East Grand's FCC Form 471, was included by East Grand in error, and was not part of the service contract underlying FRN 311017.<sup>19</sup> We find, however, that SLD properly relied on the documentation as evidence of what services were being requested. SLD is entitled to rely on the accuracy of the information reported by the applicant.<sup>20</sup> In FRN 311017, East Grand specified that Attachment A was the document describing the service.<sup>21</sup> Further, all the information on Attachment A, such as the service provider and amount of the service, is consistent with the request made in FRN 311017, and thus, SLD had no reason to doubt that Attachment A was not the correct description.<sup>22</sup> Indeed, there is no evidence in the record even now that Attachment A is not the correct description. We therefore find that East Grand's allegation that Attachment A is erroneous does not provide a basis for relief.

8. East Grand next argues that Attachment A indicates two amounts, the first for the purchased items and the second for Internet access service, and that the amount requested in FRN 311017 is equal to the latter cost, demonstrating that the request does not include the router and server costs.<sup>23</sup> We find that Attachment A lists a \$16,000 price for "Installation and Set-up of Service," including the purchase of network routers, a Channel Service Unit/Data Service Unit (CSU/DSU), and an Internet Server, and separately lists a \$39,800 cost for "Internet access."<sup>24</sup> We further find, as East Grand asserts, that FRN 311017, which seeks a pre-discount cost of \$39,804, seeks discounts only on the latter service.<sup>25</sup> However, SLD's characterization of FRN 311017 did not rest on a finding that the request included the purchase of routers and servers, but rather that it included the *maintenance* of the routers and servers.<sup>26</sup> Our review of Attachment A confirms that part of the service included with Internet access is the maintenance of the purchased hardware.<sup>27</sup> The maintenance of internal connections is appropriately characterized as

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<sup>19</sup> Request for Review, at 1.

<sup>20</sup> See *Request for Review by East Side Union High School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-153147, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 3839, para. 4 (Com. Car. Bur. 2001) (applicant "bears the burden of carefully reviewing all documents sent to and received from SLD for accuracy").

<sup>21</sup> East Grand Form 471, at 3.

<sup>22</sup> East Grand Form 471, Attachment A.

<sup>23</sup> Request for Review, at 1.

<sup>24</sup> East Grand Form 471, Attachment A.

<sup>25</sup> East Grand Form 471, at 3.

<sup>26</sup> Administrator's Decision on Appeal, at 1.

<sup>27</sup> East Grand Form 471, Attachment A.

internal connections.<sup>28</sup> Therefore, SLD did not err in concluding that FRN 311017 included some amount of internal connections.

9. East Grand also argues that the router is part of Internet access because it is bundled with Internet access and is a necessary part of the provision of Internet access.<sup>29</sup> However, because Attachment A indicates that East Grand will own the router, we find that SLD correctly considered maintenance of the router to be internal connections.<sup>30</sup>

10. East Grand argues that there is no "Internet Server" as part of the contract.<sup>31</sup> We find that Attachment A contradicts this assertion.<sup>32</sup> In addition, East Grand does not deny that router maintenance is part of the service request. Thus, even if FRN 311017 did not include maintenance for Internet servers, the request would still contain services that constitute internal connections.

11. East Grand's final argument is that SLD should not have characterized all of FRN 311017 as internal connections where some of it is properly characterized as Internet access.<sup>33</sup> After consideration, we continue to uphold SLD's Funding Year 3 operating procedure to characterize a request as Priority Two if the request contained any Priority Two services. The Commission's regulations authorize SLD to establish rules and procedures for the administration of the schools and libraries support application process in an efficient and effective manner, including procedures for the review of applications and the implementation of the Commission's rules of priority.<sup>34</sup> We find that, for the reasons discussed above, SLD's operating procedure for mixed priority requests was a reasonable exercise of its authority.<sup>35</sup>

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<sup>28</sup> SLD Web Site, Eligible Services List, <<http://www.sl.universalservice.org/data/pdf/EligibleServicesList.pdf>> ("The Service Category used for labor should reflect the same service category of the product, or service being installed or maintained").

<sup>29</sup> Request for Review, at 2.

<sup>30</sup> East Grand Form 471, Attachment A; *see also* 47 C.F.R. § 54.506 (defining internal connections)

<sup>31</sup> Request for Review, at 2.

<sup>32</sup> East Grand Form 471, Attachment A.

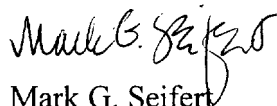
<sup>33</sup> Request for Review, at 2.

<sup>34</sup> See 47 C.F.R. §§ 54.701(a), 54.702, 54.705(a)(iii), 54.705(a)(vii).

<sup>35</sup> See *supra*, para. 4. While the application of this procedure leads to a denial of funding in this instance, that result could have been avoided by submitting two separate funding requests, one for the Priority One services, and the second for the Priority Two services. We also note that in *Request for Review by Williamsburg-James City County Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-90495, CC Dockets No. 96-45 and 97-21, 14 FCC Rcd 20152 (1999), the Commission reviewed whether SLD's priority review procedure should be applied to applications filed before the issuance of the *Fifth Reconsideration Order* and thus before the applicant had notice of the Commission's priority rules and "the need to carefully segregate its service requests . . ." *Id.* at para. 6. The Commission decided that "[u]nder these circumstances, . . . the Priority One and Priority Two services . . . should be considered separately . . ." *Id.* at para. 6 (emphasis added). Thus, in that decision, the Commission implicitly affirmed the use

12. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by East Grand School - SAD #14, Danforth, Maine, on March 16, 2001 is DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Accounting Policy Division  
Common Carrier Bureau

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of SLD's review procedure where, as here, the application was not filed until after the Commission's priority rules had been established.